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DATE: March 17, 2009  
TO: Low Income Housing Tax Credit Stakeholders  
FROM: William J. Pavão, Executive Director  
SUBJECT: Proposed Regulations

Attached are two sets of proposed regulations. The first would create a new regulation section incorporating the American Recovery and Reinvestment Act of 2009 resources expected for California. The second brief set of regulation changes make clarifying changes to the final tiebreaker in the Tax Credit competitive scheme.

The American Recovery and Reinvestment Act of 2009 makes available to California both Tax Credit Assistance Program (TCAP) funding, and cash in exchange for credits returned to the Secretary of the Treasury. The Tax Credit Allocation Committee (TCAC) is awaiting more detailed program guidance regarding these funding sources from our federal counterparts, the Department of Housing and Urban Development (HUD) and the Secretary of the Treasury. However, HUD will be posting the TCAP rules shortly, and States are likely to have short timelines for providing HUD with adopted plans for administering those funds.

In order to prepare for short federal timelines, TCAC staff has promulgated proposed regulations for public review and comment. Staff welcomes comments in writing and at hearings scheduled at three locations in California as listed in a separate rulemaking notice posted on the TCAC website.

The proposed regulations are likely to evolve as TCAC staff receive public comments and learn more from our federal counterparts. The available federal resources will be extremely helpful in developing quality affordable rental housing in California, and TCAC is committed to administering all federal resources, including these cash resources, effectively and efficiently. We welcome your partnership in developing and administering a system that generates tremendous results. Thank you for your interest and efforts.

Attachment

**American Recovery and Reinvestment Act of 2009**  
**Proposed Regulation Changes**  
**March 17, 2009**

**Section 10323**

**Proposed Change: Add the following new Section 10323**

Section 10323. American Recovery and Reinvestment Act of 2009

- (a) General. Under the authority granted by the American Recovery and Reinvestment Act of 2009 (Public Law 111-5), the California Tax Credit Allocation Committee (CTCAC) may subaward Tax Credit Assistance Program (TCAP) funds and federal grants in lieu of housing credit allocations (Exchange Funds) to projects awarded Low Income Housing Tax Credits. While CTCAC may access and subaward these funds in accordance with the provisions of this Section, nothing in this Section shall be construed to imply an obligation by the Committee to award funds to specific projects. Circumstances related to a specific project, or the sponsor's financial strength may cause the Committee to deny a subaward, in spite of that project having previously received a reservation or allocation of credits. The Committee shall state in writing reasons for denying a subaward where the standards described below would otherwise have resulted in a subaward. The overriding public interest in sound investments through cash subawards shall be paramount as the Committee makes its funding decisions.

All terms and conditions established by federal rule shall hereby be incorporated by reference.

- (b) Eligible Projects

Applicants for cash awards, either TCAP or Exchange Funds, must have a current reservation of federal Low Income Housing Tax Credits for a proposed project awarded credits in federal fiscal year 2007, 2008, or 2009 as follows:

- (1) 2007 and 2008 awardees: Projects with current 2007 or 2008 Credit Ceiling reservations and allocations are eligible for TCAP or Exchange Funds. Tax-Exempt Bond Projects are also eligible for TCAP or Exchange Funds under the conditions described in paragraph (d)(3) below. Tax-Exempt Bond Projects must have a current bond allocation or pending application for a bond allocation to apply for a cash award under these regulations.
- (2) 2009 awardees: Tax Exempt Bond Projects and projects receiving 2009 Credit Ceiling reservations by September 30, 2009 are eligible for TCAP funds. Projects receiving Credit Ceiling reservations in calendar year 2009 are eligible for Exchange Funds, if exchange authority remains, under the conditions described in paragraph (d) below.
- (3) CTCAC may, as a priority, provide cash awards subject to (b)(1) and (b)(2) above under this Section to projects that also have funding commitments from programs receiving AB 55 loans through the State's Pooled Money Investment Account (PMIA). Assistance would be

provided in a manner and at the minimum amount required to generate adequate construction period financing. Any funds provided as construction financing would be conditioned upon repayment by AB 55 funds following project completion, or earlier. These funds would remedy gaps in construction-period financing, and could be in addition to funds mitigating equity gaps as described below.

(c) Award Amounts.

- (1) Cash in lieu of credits: Projects may receive an award equal to the stated equity in the original tax credit application up to 85 cents (\$0.85) for every currently reserved federal tax credit dollar and up to 60 cents (\$0.60) for every California State Credit currently reserved by CTCAC for the project. CTCAC could reduce this award amount if a final cost certification would have resulted in a reduced credit award.
- (2) Gap financing: Projects may receive the difference between the credit equity stated in the original tax credit application, up to \$0.85 for every currently reserved federal tax credit dollar, and the committed equity up to 15 cents (\$0.15) per currently reserved federal tax credit dollar, and ten cents (\$0.10) for every California State Credit dollar.
- (3) In addition to award amounts described above, TCAC may also award cash to Tax Exempt Bond Projects with current 2007 and 2008 credit reservations that have experienced a drop in their credit rate. TCAC may award cash equaling the shortfall resulting from the placed-in-service credit rate, and 3.42 percent (3.42%).
- (4) If a TCAP award would add costs associated with federal requirements, CTCAC may adjust the project award to account for the higher costs.
- (5) No cash award amount shall exceed \$17 million.

(d) Application and Award Processes.

- (1) Cash in Lieu of Tax Credits for 2007 and 2008 Credit Ceiling Recipients.  
2007 and 2008 Credit Ceiling Reservation awardees may apply to CTCAC for an exchange of currently reserved credits for TCAP or Exchange Funds by a date publicly announced by CTCAC. CTCAC shall exchange all returned Credit Ceiling credits into the Secretary of the Treasury as part of its grant election amount. To be eligible, project applicants must demonstrate that they have made good faith efforts to obtain investment commitments for such credits, and that the project remains the same as originally proposed.

CTCAC may award TCAP rather than Exchange Funds to such projects, at CTCAC's sole discretion. CTCAC shall give priority for awarding TCAP funds to projects already paying prevailing wages, or where federal funds are a funding source in the project. CTCAC shall condition all awards of TCAP or Exchange Funds upon the following:

- (A) The project owner must return their entire current tax credit reservation, including any State Credit reservation to CTCAC.
  - (B) The TCAP or Exchange Funds recipient must adhere to the original tax credit required placed-in-service and project completion timelines for the project. The CTCAC Executive Director may adjust interim deadlines, including readiness deadlines, to accommodate loan closing schedules associated with these funds.
  - (C) The project owner must agree to the loan terms described in paragraph (e) below.
- (2) 2009 Credit Ceiling reservation recipients.
- Within the initial application for Credit Ceiling credits as described in Section 10325, applicants must indicate if they may wish to be considered for a TCAP or exchange fund award. All 2009 Credit Ceiling applicants indicating they may wish to be considered shall be underwritten by CTCAC on an assumption of equity pricing of between 70 cents (\$0.70) and 85 cents (\$0.85) for every dollar of federal credit requested, and between \$0.50 and \$0.60 for every California State Credit requested. Applicants indicating that they do not wish to be considered for a TCAP or exchange fund award may use estimated credit pricing outside of these ranges within their application.
- (A) Successful competitors for 2009 Credit Ceiling awards shall have 45 days, consistent with Section 10325(c)(8), to produce a letter of intent (LOI) from an equity partner. At the end of the 45 days, project sponsors who have executed an LOI with an equity partner for less than estimated in the original application may apply for gap financing on a form provided by CTCAC. CTCAC shall condition all gap financing awards of TCAP or Exchange Funds upon the following:
    - (i) CTCAC shall award no more than 15 cents (\$0.15) per federal tax credit dollar and 10 cents (\$0.10) for California State Credits to help fill development funding gaps.
    - (ii) The project owner must agree to the loan terms described in paragraph (e) below.
  - (B) If, at the end of the 45 days described in paragraph (A), successful 2009 Credit Ceiling reservation recipients have failed to execute an LOI with an equity partner, the project sponsor may apply for an exchange of credits for a cash award from CTCAC. Exchange applicants would be placed in a competition and scored as described in subsection (C) below for an award of cash in lieu of credits. Current Credit Ceiling reservation recipients must return their reservation before competing for a cash award in lieu of credits. To be eligible, project applicants must demonstrate that

they have made good faith efforts to obtain investment commitments for such credits, and that the project remains the same as originally proposed. In addition, if successful, competitors shall agree to the following as a condition of receiving a cash commitment:

- (i) CTCAC shall award no more than 85 cents (\$0.85) per federal tax credit dollar and 60 cents (\$0.60) per California State Credit dollar originally reserved.
  - (ii) The project owner must agree to the loan terms described in paragraph (e) below.
- (C) Competitors would be scored and ranked competitively based upon the following criteria alone. All scoring information shall be drawn from the originally scored tax credit application.
- (i) Project type (50 points). Projects would earn points as follows:
    - Special needs projects meeting the requirements of Section 10325(g)(4) 50 points
    - Rural projects meeting the requirements of Section 10315(c) 30 points
    - At-risk projects meeting the requirements of Section 10325(g)(5) 30 points
    - Family projects meeting the requirements of Section 10325(g)(1) and senior projects meeting the requirements of Section 10325(g)(2) 10 points
    - All others 0 points
  - (ii) Cash award requested (100 points). Projects would earn points based upon the cash requested in inverse relation to total project costs. Lesser cash requests relative to total project costs will garner higher scores. Where “N” equals the percentage the cash request represents relative to total project costs, points = 100-N. (Example: Where the cash request N equals 60% of the project cost, the applicant’s score would be 40.)
  - (iii) Average Affordability (100 points). Projects would earn 5 points for every one percent (1%) that the project’s average affordability would be below 60 percent (60%) of Area Median Income (AMI). While CTCAC’s Regulatory Agreement would regulate specific numbers of units at income levels specified in the application, this scoring factor would be based upon a calculation determining the project’s average overall affordability. (Example: A project with an

average affordability of 50% of AMI would garner the percentage below 60% (10 times 5 points, or 50 points). An average affordability of 40% of AMI would garner the full 100 points. Units with project-based rental assistance or substantial operating subsidy shall receive points based upon those units serving households at the regulated limit for those subsidies, except that Section 8 units shall be assumed to serve households at 40 percent of AMI.

- (3) Recipients of credits for Tax-Exempt Bond Projects.
- (A) Eligible 2007, 2008, and 2009 Tax-Exempt Bond Projects with, as of the application due date, bond allocations or tax-exempt bond applications pending (a) with a current credit reservation and (b) lacking an equity partner, may apply and compete for cash in lieu of tax credits under the process described in subsections (d)(2)(B) and (C) above. To be eligible, project applicants must demonstrate that they have made good faith efforts to obtain investment commitments for such credits, and that the project remains the same as originally proposed. Eligible 2007 and 2008 Tax-Exempt Bond Projects with committed equity partners that still have a funding gap may also compete for TCAP or Exchange Funds as gap financing within the same competition as those seeking cash in lieu of credits. Those projects must also have a current bond allocation or an application pending, a current tax credit reservation, and an executed LOI with an equity partner for less than estimated in the original tax credit application. Successful applicants shall receive either TCAP or Exchange Funds as determined by CTCAC.
  - (B) Eligible 2009 Tax Exempt Bond Projects meeting the conditions of preceding paragraph (A) after the application due date required under (A) above, shall similarly compete among themselves for cash in lieu of credits or gap financing under a separate competition. This competition may be held in two rounds during calendar year 2009, and shall also follow the process described in subsections (d)(2)(B) and (C) above.
  - (C) CTCAC shall designate an amount of funds available for competitions held only among projects described in (A) and (B) above. Projects shall compete based on the information provided in the original awarded tax credit application and any supplemental information related to TCAC employing the competitive system described in paragraph (d)(2)(C).
  - (D) The project owner shall agree to the loan terms described in paragraph (e) below.

(e) Loan Terms.

- (1) All funds must be expended by February 17, 2012.
- (2) Loans shall be originated for a term of 55 years. The project owner must execute a Promissory Note secured by a recorded Deed of Trust as required by CTCAC. In addition, the project owner must execute a recorded Regulatory Agreement provided by CTCAC.
- (3) Under the terms of the Promissory Note and Deed of Trust, loan payments shall be due annually as residual receipts payments. Payments shall be due in the amount of 50 percent (50%) of any residual receipts after non-cumulative preferred residential cash flow to the owner of \$500 per unit, increasing by the Consumer Price Index for All Urban Consumers, West Region, All Items, as published annually by the Bureau of Labor Statistics, United States Department of Labor, and after payment of a non-interest bearing deferred developer fee included in basis, consistent with the conditions of Section 10327(c)(2)(A). Payment of required principal and interest to other public funding sources under the terms of executed loan documents shall be payable prior to loan payments described in this paragraph.
- (4) Recipients of cash loans in lieu of tax credits shall enter into a binding agreement establishing CTCAC's right of first refusal to purchase the project for its fair market value at the time the owner chooses to sell the project, except for a sale under IRC §42(i)(7). This right is assignable by CTCAC to a third party of its choice, and shall be in effect for the duration of the Regulatory Agreement. This requirement shall not apply to projects receiving gap financing only, as described in paragraph (c)(2) above.
- (5) The interest rate for any loans authorized under this section shall be zero.
- (6) CTCAC shall disperse loans provided as gap funding during construction as needed upon receiving evidence that costs have been incurred. CTCAC shall disperse loans provided in lieu of tax credit equity on the following schedule: 30 percent (30%) at construction loan closing as justified by costs; 60 percent (60%) at permanent loan conversion; and (10%) upon stabilized occupancy.

**American Recovery and Reinvestment Act of 2009**  
**Statement of Reasons**  
**March 17, 2009**

**Section 10323**

**Subsection (a)** generally introduces a new regulatory section describing rules related to the American Recovery and Reinvestment Act of 2009. The text specifically identifies both Tax Credit Assistance Program (TCAP) and federal Exchange Funds as cash resources governed by this regulatory section. Subsection (a) also specifies eligible projects as those with active tax credit reservations. This signals the California Tax Credit Allocation Committee's (TCAC's<sup>1</sup>) intention to focus on these projects for economic stimulus purposes. At some future date TCAC may wish to amend this section to allow the use of repayments or unused exchange dollars in 2010 projects, but is awaiting further federal guidance at this time.

Subsection (a) also clearly notifies the public that TCAC reserves the right to decline a loan if underwriting indicates that such a loan would not be prudent. TCAC will lend these federal dollars while exercising due diligence and prudent judgment, which may ultimately lead to declining the loan application.

Finally, subsection (a) concludes by incorporating by reference all relevant federal rules, many of which are yet to be disclosed at the time these regulations are being released.

**Subsection (b), paragraphs (1) and (2)** establish the eligibility of federal fiscal year 2007 and 2008 reservation recipients, as well as current-year recipients with credit reservations accepted prior to September 30, 2009. Both Credit Ceiling and Tax Exempt Bond Projects are eligible for TCAP or Exchange Funds, although by federal statute post-September 30, 2009 reservation recipients would only be eligible for Exchange Funds. The proposed regulation would allow post-September 30, 2009 Credit Ceiling recipients to exchange credits and apply for cash in lieu of credits, if exchange authority remains at that time. 2009 exchange authority is limited, and prior year returned credit volume is uncertain.

**Paragraph (3)** of subsection (b) alerts the public that TCAC may use TCAP and/or Exchange Funds to mitigate financing difficulties caused by delays in PMIA funding for affected tax credit projects. This paragraph is intentionally nonspecific at this time, in light of evolving circumstances regarding PMIA-funded AB 55 loans. During the public comment period, circumstances regarding PMIA are likely to become clearer, and the final rule may contain more specificity.

**Subsection (c)** establishes two forms of assistance using either TCAP or Exchange Funds.

**Paragraphs (1) and (2)** establish that TCAC may provide (1) cash in lieu of tax credits, or (2) gap financing to complement equity invested in the project by virtue of Low Income Housing Tax Credits. Those paragraphs also express maximum award amounts

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<sup>1</sup> Note that the regulatory text uses the acronym CTCAC, a defined term within the existing regulations. This statement of reasons will use the more conventional "TCAC" when referring to the California Tax Credit Allocation Committee.



per dollar of tax credits reserved for the project. The 85 cent per dollar of tax credit maximum reflects the federal percentage associated with the housing grant election amount available to TCAC in exchange for credits. While nothing in federal law limits the subaward amount to tax credit projects, 85 cents per dollar is consistent with the federal exchange rate, and is a reasonable maximum for projects funded in 2007 through 2009. Earlier-year project sponsors typically envisioned more than 85 cents per credit dollar in their awarded tax credit applications. However, those project sponsors have typically adjusted their expectations downward, and are able to bring a project to completion with a lesser credit price. If TCAC were to provide either gap funding or cash in lieu of credits to the original earlier-year application equity pricing estimate, the available federal funds would assist fewer projects, and could be subsidizing projects well beyond where today's equity market is pricing credits.

**Paragraph (3)** also permits TCAC to assist with cash to mitigate the financial harm caused by dropping credit factor percentages for Tax Exempt Bond Projects. The proposed regulation would permit TCAC to award the cash difference between the actual credit rate and 3.42%. The rate 3.42% was the average monthly credit rate during 2007 and 2008. These awards would not fill gaps left by declining credit pricing, but by declining tax credit award amounts due to a dropping credit rate.

**Paragraph (4)** allows TCAC to award additional cash to mitigate additional federal costs, such as paying Davis Bacon wages. This paragraph helps mitigate any additional wage and administrative costs induced by TCAP.

**Paragraph (5)** establishes an absolute maximum award amount per project of \$17 million. This figure equals a cash in lieu of credit award to a \$2 million annual federal credit award recipient project. Without such a cap, larger awards could be possible for very large Tax Exempt Bond Projects, very large projects with State Credits, and 2009 \$2.5 million annual federal credit recipients. By establishing a cap, TCAC hopes to make cash available to more projects, and limit the amount of federal resources risked on a single project.

**Subsection (d)** describes the methods for subawarding TCAP and exchange dollars to projects with current tax credit reservations. TCAC considers federal TCAP grants to the Committee and dollars provided to the Committee in exchange for credits as a single resource for subawarding purposes. TCAC will attempt to deliver TCAP funds to projects already complying with applicable federal overlay requirements by virtue of another federal funding source invoking those requirements. Where a project does not already face TCAP-invoked requirements, TCAC will attempt to deliver Exchange Funds where available.

Federal law requires that TCAC subaward Exchange Funds "in the same manner . . . as an allocation of housing credit dollar amount allocated by such State housing credit agency." Under a separate section of federal law TCAC "shall distribute (TCAP) funds competitively under this heading and pursuant to their qualified allocation plan." In developing a system that subawards Exchange Funds and TCAP funds interchangeably, TCAC will adhere to both federal requirements for both funding sources.

**Paragraph (1)** describes the process by which prior-year (2007 and 2008) Credit Ceiling reservation projects may access TCAP or Exchange Funds. All of these projects would

have successfully competed for their current credit reservations. Whether a project has an equity partner with a funding gap or lacks an equity partner altogether, TCAC would require a full return of credits, and will deliver cash in lieu of credits to all applying prior year Credit Ceiling projects. This approach would “increase the total funds available to the State to build and rehabilitate affordable housing,” another federal requirement applying to Exchange Funds. That is, collecting and exchanging the project’s reserved credits for cash would cost no additional State-administered resources, while filling a funding gap without an exchange would. Thus, a full exchange would increase the total affordable housing funds available.

Paragraph (1) also requires that the project adhere to its original placed-in-service (PIS) date, and adhere to the loan terms described in subsection (e). Adherence to the original PIS date is consistent with the American Recovery and Reinvestment Act of 2009’s immediate economic stimulus intent, and assures the timely expenditure of TCAP funds as required by statute. However, the Executive Director could adjust interim timelines to account for additional processes associated with TCAC financing.

Referencing the loan terms in paragraph (e) for cash in lieu of credit awards, includes paragraph (e)(4) which would establish a right of first refusal to TCAC to purchase the property at fair market value whenever the owner elects to sell the property. This condition is meant to both protect the State’s long-term financial interest in the project, and limit prior-year projects to only those who truly lack an equity partner. That is, TCAC seeks to avoid a project seller seeking large cash payouts upon sale to the detriment of the project’s value as security for TCAC’s loan. In addition, TCAC seeks to limit the overall debt burden placed upon the property in order to maintain the project’s fiscal viability over the long term.

**Paragraph (2)** describes the scheme under which 2009 Credit Ceiling reservation recipients may access TCAP or Exchange Funds. The introductory paragraph establishes that potential recipients must first compete for a Credit Ceiling award through the tax credit competition. An additional condition for tax credit applicants is that they (a) declare that they may seek cash later, and (b) that their application adheres to credit pricing assumptions specified by regulation. The proposed credit pricing range reflects TCAC’s understanding of the normal pricing range reasonably anticipated in today’s tax credit equity market. The 85 cent maximum also tracks with the exchange rate TCAC would use in returning credits for cash grants from the U.S. Treasury. Tax credit applicants may waive their opportunity to later access cash subawards and use credit pricing assumptions outside of the prescribed ranges.

**Subparagraph (A)** describes how TCAC would provide a funding gap award to 2009 Credit Ceiling projects that have an equity partner but still have an equity shortfall. Securing an equity partner and identifying the equity shortfall would occur within 45 days of TCAC’s initial credit reservation letter. While 45 days is extremely prompt, TCAC wishes to accelerate the gap funding process to the extent possible. TCAC views such awards as the highest public policy benefit, in that they retain the tax credit structure with the associated benefits of private investment. Therefore, gap funding awards would have been subject to the initial 2009 credit competition and would receive gap funding as soon as an equity partner and resulting gap is identified.

Paragraph (A) also establishes 15 cents up to an 85 cent per tax credit dollar equity estimate as the maximum award amount. These parameters are consistent with the federal cash-for-credit exchange rate for TCAC, and place a practical floor on the equity partner's credit pricing. That is, an equity contribution leaving a gap in excess of 15 cents would pull the project sponsor toward the cash in lieu of credit option. Also, TCAC would only fund the equity gap between the actual equity partner pricing and the original application's pricing assumption, up to 85 cents. In this way, TCAC would avoid over-subsidizing projects that already indicated their viability at a lower credit price.

**Subparagraph (B)** describes how 2009 Credit Ceiling awardees would seek cash in lieu of credit awards. The paragraph establishes the same timing for determining that an equity partner cannot be found (45 days), and cash award amount maximums as in paragraph (A). The subparagraph also requires that all awarded credits be returned and that applicants compete under a stated scoring system. TCAC would exchange the returned credits into the U.S. Treasury for cash. Those dollars, or their TCAP equivalent, would then be available for the 2009 cash in lieu of credit competitors. The exchange dollars would not adequately fund all exchange requestors in light of lacking State Credit equity. Therefore, cash in lieu of credit seekers would take a true competitive risk. TCAC believes this would further motivate Credit Ceiling recipients to successfully find an equity partner. In addition, cash in lieu of credit recipients would again face the right of first refusal requirement, another potential incentive to find an equity partner.

**Subparagraph (C)** describes the proposed scoring scheme for the 2009 Credit Ceiling cash in lieu of credit competition. The 250-point system balances prioritizing projects that are challenged to find equity partners at all (i); stretching the cash dollars relative to project costs (ii); and rewarding the public benefit of affordability (iii). The benefits of this scheme include the scoring data being readily available in the originally awarded tax credit applications; a balancing of important public policies related to the equity deficiency of various project types; stretching the cash among projects in a reasonable fashion; and simplicity. The ability to manipulate the suggested factors is limited in light of the initial tax credit competitive scheme through which project must first prevail. For purposes of scoring average affordability, project-based Section 8 subsidized units would be scored at 40 percent (40%) of AMI. Even though Section 8 assistance is permitted for households earning up to 50 percent (50%), as a practical matter Section 8 assistance is typically targeted to extremely low-income households and the proposed scoring would reflect that fact.

**Paragraph (3)** addresses Tax Exempt Bond Projects with either funding gaps or lacking equity partners altogether. Bearing in mind that these projects do not have credits that are exchangeable at the federal level, TCAC is proposing a competitive process that would reward gap funding over cash in lieu of credit awards.

**Subparagraph (A)** would have projects seeking gap financing or cash in lieu of credits compete among themselves in a single competition using the same scoring factors established for 2009 Credit Ceiling cash in lieu of credit applicants. This system would provide a significant advantage to gap financing applicants. This advantage would likely be overcome only by projects receiving very high scores through deeper income targeting and by being one of the high-scoring project types. Competitions would be held for prior-year and early-2009 reservation recipients and, later, for 2009 reservation

recipients. The later-2009 competition may be held in one or two rounds, depending on volume and timing of reservation recipients.

**Subparagraph (B)** establishes a similar competitive process for later-2009 Tax Exempt Bond Projects with funding gaps or lacking equity partners altogether. The text proposes up to two rounds for such projects to compete among themselves for cash awards, again using the previously described competitive scheme.

**Subparagraph (C)** provides TCAC with the authority to establish the amounts available for each of the Tax Exempt Bond Project competitions. These awards would constitute an absolute net expenditure of cash resources since Tax Exempt Bond Projects have no “exchangeable” credits to offset the cash expenditures. TCAC envisions sizing the competitive pots relative to demand, while retaining adequate resources to fill equity gaps for 2009 Credit Ceiling projects.

**Subparagraph (D)** simply incorporates the loan terms in subsection (e), including the right of first refusal to purchase provision (e)(4) for cash in lieu of credit awards, for the same reasons stated for paragraph (d)(1) above.

**Subsection (e)** lists the applicable terms for subawards under Section 10323.

**Paragraph (1)** requires that all funds be expended by February 17, 2012. This expenditure deadline reflects the federal priority rule associated with federal TCAP funds and assures an accelerated schedule for projects progressing to completion consistent with the economic stimulus intent of the federal statute.

**Paragraph (2)** establishes that all cash assistance under Section 10323 would be in the form of a 55-year loan under the terms of a Promissory Note secured by a deed of trust against the property. This structure addresses the federal requirement that TCAC establish recapture provisions for exchange dollars. The combination of a recorded Regulatory Agreement and Promissory Note, each secured by a deed of trust effectively ensures compliance and other performance under the terms of each.

**Paragraph (3)** establishes that loan payments shall be due as residual receipts payments, subject to any other public funding source residual receipts payment requirements. This establishes TCAC loan funds as the most patient among public lenders in a given project. The loan would be repayable annually from residual receipts in excess of \$500 per unit per annum, adjusted annually by the most relevant CPI factor. These repayment terms assure that a project sponsor is motivated to achieve a reasonable project cash flow, beyond which rents may be lowered, or loan payments will be due.

**Paragraph (4)** establishes TCAC’s right of first refusal to purchase a property upon sale, if that project received cash in lieu of credits from TCAC. As discussed earlier, this condition is meant to both protect the State’s long-term financial interest in the project, and limit prior-year projects to only those who truly lack an equity partner. That is, TCAC seeks to avoid project seller’s seeking large cash payouts upon sale to the detriment of the project’s value as security for TCAC’s loan. In addition, TCAC seeks to limit the overall debt burden placed upon the property over time in order to maintain the project’s fiscal viability over the long term. TCAC could assign this right to a third party.

**Paragraph (5)** establishes a zero percent interest rate on TCAC loans, avoiding accruing debt that could further suppress investor appetite for projects with such loans.

**Paragraph (6)** establishes the pay-in schedule for TCAC loans. Gap financing loans will be disbursed as early construction costs are incurred to encourage participation by conventional construction lenders. Payments for cash in lieu of credits loans will be phased as described to (a) reduce TCAC's exposure to construction period risk, and (b) induce in private construction lenders to help manage construction period risk.